



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-6034-N]

Medicaid Program; Announcement of Medicaid Recovery Audit Contractors (RACs)

Contingency Fee Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces an increase to the maximum contingency fee, for which Federal financial participation (FFP) will be available, that may be paid to Medicaid Recovery Audit Contractors (RAC) by State Medicaid programs as authorized by section 1902(a)(42)(B) of the Social Security Act (the Act), as amended by the Affordable Care Act, requiring States to establish Medicaid RAC programs. In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule that ties the Medicaid RAC contingency fee to the Medicare Recovery Audit Program with an opportunity for the States to request an exception to exceed the highest fee paid to a Medicare Recovery Auditor. Further, we indicated in the final rule that we would make States aware of any modifications to the payment methodology for contingency fee rates and Medicaid RAC maximum contingency fee rates by publishing a notice in the **Federal Register**. Therefore, this notice will inform States that Medicare has increased the maximum contingency fee paid to Recovery Auditors by 5 percent for the recovery of overpayments only for durable medical equipment claims (DME).

EFFECTIVE DATE: This notice is effective on [INSERT DATE 30 days after the date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT:

Lori Bellan, (410)786-2048; or Joanne Davis, (410)786-5127.

SUPPLEMENTARY INFORMATION:

I. Background

In the September 16, 2011 **Federal Register** (76 FR 57808), we published a final rule entitled: “Medicaid Program; Recovery Audit Contractors.” This final rule finalized provisions related to the implementation of a Medicaid Recovery Audit Contractor (RAC) program and provided guidance to States related to Federal/State funding of State start-up, operation and maintenance costs of Medicaid RACs and the payment methodology for State payments to Medicaid RACs. In particular, and as stated in 42 CFR 455.510(b), States must determine the contingency fee rate to be paid to Medicaid RACs for the identification and recovery of Medicaid provider overpayments. We also indicated at 42 CFR 455.510(b)(4):

[T]he contingency fee may not exceed that of the highest Medicare RAC, as specified by CMS in the **Federal Register**, unless the State submits, and CMS approves, a waiver of the specified maximum rate. If a State does not obtain a waiver of the specified maximum rate, any amount exceeding the specified maximum rate is not eligible for FFP, either from the collected overpayment amounts, or in the form of any other administrative or medical assistance claimed expenditure.

The September 16, 2011 final rule contains additional information about the process States must follow to obtain an exception to the specified maximum rate.

II. Provisions of the Notice

In the final rule at 42 CFR 455.510 (b)(4), we stated that the contingency fee paid to the Medicaid RAC may not exceed that of the highest fee paid to a Medicare Recovery Auditor, unless the State submits, and CMS approves, an exception to the specified maximum rate, as specified in the **Federal Register**.

On June 1, 2011, we increased the contingency fee by 5 percent for the recovery of overpayments associated with DME claims that were identified by the Medicare Recovery

Auditors. Therefore, the modification increases the maximum contingency fee paid to a Medicare Recovery Auditor to 17.5 percent for DME claims only. As a result of this modification, we now authorize States to pay their respective Medicaid RACs a contingency fee up to 17.5 percent of the recovered overpayment, the current highest contingency fee paid to Medicare Recovery Auditors, for the recovery of improper payments made for medical supplies, equipment and appliances suitable for use in the home found within the Medicaid home health services benefit authorized by section 1905(a)(7) of the Act. We note that this increase in the maximum fee for which FFP is available for payments to Medicaid RACs applies only to fees paid for the recovery of improper payments of this subset of claims. The current highest contingency fee paid to Medicare Recovery Auditors for the recovery of improper payments made on all other types of claims remains the same at 12.5 percent; thus, the maximum fee that may be paid to Medicaid RACs for the recovery of improper payments on other types of claims similarly remains at 12.5 percent. This policy is consistent with section 1902(a)(42)(B) of the Act, which requires States to contract with Medicaid RACs “in the same manner as the Secretary enters into contracts” with the Medicare Recovery Auditors. The policy is also consistent with guidance provided in the final rule which aligns the Medicare Recovery Audit Program and Medicaid RAC program, to the extent possible.

III. Collection of Information Requirements

This notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35). However, it does reference previously approved information collections. As stated in section I of this notice, States must submit justifications to CMS to receive an exception to pay Medicaid RACs a contingency fee that exceeds the highest fee paid to a Medicare Recovery Auditor.

CMS-6034-N

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: February 8, 2012

Marilyn Tavenner,

Acting Administrator,

Centers for Medicare & Medicaid

Services.

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